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October 31, 2017

via email

Mayor Steve Adler
City Councilmembers
P.O. Box 1088
Austin, Texas 78767

Re: CodeNext Draft 2

Dear Mayor Adler and Councilmembers:

This letter presents my personal views. I am not writing on behalf of any other person, entity, association, or group. I am not being compensated for writing this letter. While many of my comments are based on and will refer to the LifeAustin outdoor amphitheater as a case study, my comments are intended solely as my participation in the legislative process relating to the consideration and adoption of CodeNext. I have no intent to reopen any issues with LifeAustin. The neighborhood associations and LifeAustin have a settlement agreement and it is my personal desire to see the parties fully comply with the settlement agreement. I have no intent of re-litigating staff actions and decisions relating to the LifeAustin outdoor amphitheater but what staff did with respect the LifeAustin outdoor amphitheater is instructive as to how staff would implement the proposed Title 23.

As stated in the Zucker Report, public trust in the zoning and planning departments are low. One cause of the low public opinion is the lack of transparency and accountability. My comments primarily address a key, statutorily required component to maintaining transparency and accountability: appeals to the board adjustment of administrative decisions made pursuant to the City's zoning code ("**BOA Appeals**"). Based on my personal experiences over the last six years, I also address significant changes from the text of Chapter 25-2 that would allow outdoor entertainment and large gatherings of people at outdoor events in low density residential districts.

The implementation of the new zoning code through administrative decisions will reveal many unintended results. Under Chapter 211 of the Texas Local Government Code (“**Chapter 211**”), the board of adjustment has the statutory authority to uphold, amend, and overturn administrative zoning related decisions when appealed by an “aggrieved person.” Texas courts have interpreted this state law as authorizing the appeal of **any** administrative decision made pursuant to Chapter 211 and pursuant to a local zoning code. The right to a BOA Appeal is granted and protected by state law, not the City Code.

Chapters 23-2 and 23-4 contain several significant changes from the text of Chapters 25-1 and 25-2 regarding BOA Appeals and would codify several legally questionable interpretations currently used by City staff to thwart the right of an aggrieved person to file a BOA Appeal and have that appeal heard by the board of adjustment. As discussed below, many of the Title 23 appeal procedures violate due process protections provided by Chapter 211. The Council needs to decide whether the implementation of Chapter 23-4 should be an open, transparent public process or a closed one with reduced accountability.

Before addressing the specific provisions of Title 23 relating to BOA Appeals, I will briefly summarize the statutory requirements (Chapter 211) relating to BOA Appeals.

Statutory Right to Appeal Zoning-Related Administrative Decisions

Chapter 211 establishes a separation of powers with respect to zoning regulations. City councils legislatively adopt zone ordinances. Zoning commissions are statutorily required to hold public hearings and make preliminary reports regarding changes to zoning districts and the adoption of new zoning regulations. City staff has the authority to implement a zoning code which necessarily encompasses a limited authority to interpret the zoning code subject to review by the board of adjustment when a BOA Appeal is filed.

If a city establishes a board of adjustment, then state law mandates the board of adjustment has authority to hear and decide an appeal by an aggrieved person that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of [subchapter A, Chapter 211] or an ordinance adopted pursuant to subchapter A, Chapter 211. See Section 211.009(a)(1), Texas Local Government Code (“**TLGC**”). Section 2-1-111(F)(2), City Code, authorizes the Board of Adjustment to “hear and decide an appeal of an administrative action

under Chapter 25-2 (Zoning)". Appeals filed with the board of adjustment are called "Interpretation Appeals."

Consistent with the separation of powers framework found in Chapter 211, a board of adjustment is generally described as a "quasi-judicial" body. The process for filing a BOA Appeal mirrors the procedures for filing a lawsuit. When filing a lawsuit, a plaintiff must first file the original petition with the clerk of the court and then have a copy of the filed petition served on the defendant. The Court Clerk acts independently but in support of the court hearing the case. Court clerks do not review the merits or timeliness of a lawsuit petition.

Importantly, Chapter 211 requires the notice of appeal to be filed with the board of adjustment independent of submitting a copy of the notice of appeal to the administrative official whose decision is being appealed: "appellant must file with the board **and** the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal." Section 211.010(b) TLGC (Emphasis added).

Under Chapter 211, the deadline for filing a BOA Appeal is determined by the rules of the board: "The appeal must be filed within a reasonable time **as determined by the rules of the board**. Section 211.010(b), TLGC (Emphasis added). It is questionable whether a City Code provision can interfere with the statutory authority of a board of adjustment to set deadlines for filing a BOA Appeal. It is even more questionable that City staff has the lawful authority to interpret and act upon the rules of the board of adjustment without notifying the board of adjustment or having explicit direction from the board of adjustment to take such actions.

Upon the filing of a notice of appeal, two distinct actions are mandated by Section 211.010 TLGC. First, Section 211.010(b), TLGC requires the administrative official to immediately send to the board a complete copy of the file relating to the appeal: "On receiving the notice, the official from whom the appeal is taken **shall immediately transmit to the board all the papers constituting the record of the action that is appealed.**" (Emphasis added)

Second, Section 211.010(c), TLGC effectively imposes an injunction on all further municipal actions relating to the decision being appealed: "An appeal stays all proceedings in furtherance of the action that is appealed . . ."

Simply put, the board of adjustment has jurisdiction over a BOA Appeal once notice of the appeal is tendered to the board of adjustment and to the administrative official whose decision is being appealed. Chapter 211 does not contemplate or suggest that administrative staff have any authority to dispose of a BOA Appeal once the notice of appeal is filed. Under Chapter 211, board of adjustment jurisdiction is established by the action of the person appealing, not by the response of City staff. See *Davis v. Zoning Bd. Of Adjustment*, 865 S. W.2d 941 (Tex. 1993). Title 25 follows the requirements of Section 211.010(b) and (c) and recognizes the jurisdictional authority of the board of adjustment: Section 25-1-191(A) states: Before opening a hearing, **a body hearing an appeal shall decide** preliminary issues raised by the parties, including whether to postpone or continue the hearing and **whether the appellant has standing to appeal**. (Emphasis added). The proposed Title 23 does not comply with many of the Chapter 211 requirements pertaining to BOA Appeals.

The purpose of BOA Appeals is to provide an administrative hearing process to address an appeal without being required to file a lawsuit. One element of having standing to file a lawsuit challenging a governmental action is whether the plaintiff has exhausted all available administrative remedies. Under Chapter 211, the board of adjustment is the administrative remedy available to aggrieved persons.

APPEALS TO THE BOARD OF ADJUSTMENT UNDER TITLE 23

Division 23-4B-2 begins with code interpretations and use determinations under Chapter 23-4 (Zoning): Section 23-4B-2010(B) describes “Project-Level Interpretations” and Section 23-4B-2010(C) describes “Non-Project Interpretations.” Notably, Division 23-4B-2 does not mention “informal land use determinations and code interpretations.” These are not “Non-Project Interpretations” with formal applications. These are the informal communications by telephone call, email, and hallway conversations between staff and the public regarding the meaning and staff interpretation of the City Code and City Rules. These informal determinations and interpretations are not only inevitable (given the complexity of Title 25) but also necessary for the City departments and the public to operate under Title 25. Problems arise when an informal determination or interpretation is deemed to be an “official” determination or interpretation subject to appeal. As drafted, Title 23 allows informal determinations and interpretations to continue (no

problem there) but does not provide any procedures when an informal determination or interpretation is converted into an official, appealable decision.

Division 23-4B-2 ends with Administrative Appeals (BOA Appeals). Section 23-4B-2030 provides:

- (A) A **project code interpretation or use determination** issued in compliance with this Division for a particular development application **may be appealed to the Board of Adjustment in compliance with Article 23-2I (Appeals)**. (Emphasis Added). If the code interpretation or use determination is not appealed, or is upheld by the Board on appeal, a subsequent decision by the Planning Director to approve or disapprove a development application associated with the interpretation or determination may not be appealed under this Section.
- (B) Except as provided in Subsection (A), a person who alleges that the Director's decision **to approve or disapprove a development application** is inconsistent with a zoning standard adopted under this Title may appeal the Director's decision to the Board of Adjustment **subject to the requirements of Article 23-2I (Appeals)**. (Emphasis added)

By context, Division 23-4B-2 suggests that Project-Level Interpretations and Non-Project Interpretations are the only decisions that are subject to a BOA Appeal. Section 23-4B-2030, however, does not mention a right to appeal a Non-Project Interpretation under Section 23-4B-2010(C). The right to appeal a non-project interpretation to the board of adjustment must be included, as required by Chapter 211. Virtually all zoning code interpretations are subject to a BOA Appeal. *Ballantyne v. Champion Builders, Inc.*, 144 S. W. 3d 417, 426 (Tex. 2004). (“The BOA has the power to hear and decide appeals from any decision or determination by a city administrative official pertaining to the enforcement of the city’s zoning ordinance”). Title 23 must be either prohibit informal determinations and interpretations from being converted into official, appealable decisions or provide an opportunity for the affected public to appeal.

WHO MAY APPEAL TO THE BOA

Article 23-2 marks a significant departure from the appeal procedures found in Title 25 and violates several of the statutory requirements found in Chapter 211. As drafted, Article 23-2I narrows the opportunities for an “aggrieved party” to have their appeal heard by the Board of

Adjustment and codifies current staff zoning code interpretations and practices that block BOA Appeals from being heard by the board of adjustment.

Section 23-2I-1020(A) states: A person may appeal an administrative decision only if the person is an interested party under Section 23-2C-2020 (Interested Parties) and:

- (1) **This Title specifically provides a Right of Appeal for the decision;**
- (2) The person provides comments as required under [Section 23-2I-1020(B)]; and
- (3) A notice of Appeal under Section 23-2I-2010 (Notice of Appeal) is submitted not later than the deadline specified under Section 23-2I-1030 (Deadline for Appeal). (Emphasis added)

Section 23-2I-1020(A)(1) reflects the fundamental error in Article 23-2I regarding BOA Appeals. The right to appeal a zoning-related administrative decision is granted by state law in Chapter 211; not Title 23 or the City Code. Legal fights between citizens and the City regarding the right to appeal zoning related administrative decisions go back more than thirty years. See *Austin Neighborhoods Council, Inc. v. Board of Adjustment*, 644 S. W.2d 560 at footnote 8 (Tex. App.-Austin 1982, writ ref'd n.r.e.). Title 23 is just the latest chapter in this ongoing struggle.

As discussed below, this deviation from Section 211.010(b) TLGC and staff interpretations of the Title 25 appeal procedures have already eviscerated Chapter 211 appeal rights. Title 23 reflects an attempt to codify these Title 25 interpretations.

TIME TO FILE A BOA APPEAL

Title 23 is not clear as to when a “decision” becomes appealable. For example, the initial set of staff comments to a site plan may include a statement regarding whether the proposed use of the structure is allowed under the zoning district. If an interested party or Registered Party disagrees with the staff comment, does the interested party have to file an appeal based on the first set of staff comments? Section 23-2C-5020 does not appear to require notification of such decisions during the review of an application. Since staff comments to a site plan application or a building permit are not communicated to interested parties, does the 14 day time period apply to appealing the staff comment? How is the public to know of all the non-noticed decisions that affect their BOA Appeal rights?

Under Article 23-2I, an informal land use determination or Non-Project Interpretation communicated between staff and any person triggers the 20 day time period for filing an appeal of

that land use determination. If so, then a prospective permit applicant will be able to block all appeals of the informal land use determination by merely sending an email to the director requesting the director's interpretation a few weeks before submitting the application. The notification requirements for a Non-Project Interpretation are circular and meaningless. Who would staff send notice to regarding a Non-Project Interpretation? This type of appeal blocking Non-Project Interpretation already happens under Title 25.

In the LifeAustin amphitheater BOA Appeal case (C15-2015-0147), staff decided that a private December 2008 email between a director and the engineer for the project was the sole, appealable decision regarding whether a large, permanent outdoor amphitheater was a permitted use in the RR zoning district. Staff did not inform the surrounding neighborhoods of the existence of the email for more than two years. When my homeowners association filed a BOA Appeal in October 2011 regarding the approval of the site plan and restrictive covenant for the outdoor amphitheater, staff refused to forward the appeal to the board of adjustment.

On or about October 27, 2011, the City's Law Department sent a letter informing my neighborhood association that "the Planning & Development Review Department ("PDRD") has rejected your administrative appeal of October 21, 2011 as untimely." The October 27, 2011 letter stated the Administrative Appeal was untimely because the City determined that the decisions being appealed were all subsumed in and addressed in the 2008 Guernsey Email. In the October 27, 2011 letter, the City staff claimed that the referenced 2008 Guernsey Email constituted a "use determination" that could have appealed within twenty days of December 23, 2008, even though my neighborhood association had no notice, actual or constructive, of the decision. Under current staff practices, the responsible director and the Legal Department decide which decision he wants to use for triggering the deadline for filing an appeal. Title 23 would explicitly authorize these practices.

After filing its October 2011 BOA Appeal, my neighborhood association and another neighborhood association filed two additional BOA Appeals relating directly or indirectly to the construction of the Life Austin outdoor amphitheater. Staff refused to forward the appeals to the board of adjustment and did not notify the chair of the board of adjustment that a notice of appeal had been filed and disposed of by staff. In each case, the Legal Department and the responsible

director reviewed each appeal and made a decision to not forward the BOA Appeal to the board of adjustment.

The City Legal Department defended administrative decisions to not forward the BOA Appeals to the board of adjustment by asserting the “appeal is not timely filed,” “it is not an appealable decision,” or “the party filing the appeal doesn’t have standing.” I had staff file mark a copy of an appeal when it was submitted at One Texas Center, but the appeals were not entered into the City system and the filing fee check was not deposited. Based on its assessment and decision on the appeal, Staff asserted that no appeal existed and, therefore, the staff had no duty under Chapter 211 or Section 25-2-185 to forward the notice of appeal to the board of adjustment. Section 25-1-185 states: “On receipt of a notice of appeal or an amendment of a notice, the responsible director or building official **shall promptly notify the presiding officer of the body** to which the appeal is made and, if the applicant is not the appellant, the applicant.”(Emphasis added)

On one occasion, I timely filed an appeal regarding staff’s decision to refuse to forward the previous appeal to the board of adjustment. Clearly a decision made in the enforcement of subchapter A, Chapter 211 and Article 25-2. Staff refused to forward that boa appeal to the board of adjustment and gave me no explanation.

ADMINISTRATIVE DETERMINATIONS OF BOA APPEALS

Article 23-2I eliminates the Title 25 duty of the director to promptly notify the presiding officer of the body to which the appeal is made and ignores the requirements of Section 211.010(b). Article 23-2I also strips the board of adjustment of its current authority under Section 25-1-191(A) to determine preliminary matters, including whether an appellant has standing to appeal. Under Section 23-2I-1020(C), the responsible director will determine whether an appellant has standing to appeal: “If the responsible director determines that an applicant [sic] has failed to meet the requirements of this Section [23-2I-1020], the Appeal may not be considered.” Further, “the responsible director may not accept an Appeal submitted past the deadline required by this Section [23-2I-1030].” What is the justification for stripping the board of adjustment of the fundamental power to decide whether an appeal filed pursuant to Chapter 211 should be heard?

Similarly, Section 23-2I-2010(B) states “A notice of Appeal may not be accepted as timely unless it meets the requirements in Subsection (A) [of 23-2I-2010] on or before the deadline

specified under Section 23-2I-1030 (Deadlines for Appeals).” The second sentence of Section 23-2I-2010(B) authorizes the responsible director to decide whether an appellant can supplement a notice of appeal after the applicable filing deadline.

In response to a comment I posted regarding the deletion of the BOA’s authority to determine standing, staff wrote:

“For example, one comment objected to removing an existing Code provision which requires that bodies hearing an appeal decide whether a party has “standing” to appeal. **In staff’s view, the clarifications in Article 23-2I make standing a non-issue.** If an appeal is authorized, it timely filed, and meets other applicable procedures, then it should be posted and the body hearing the appeal should consider the merits of the case. If the appeal is not authorized, is untimely, or fails to meet applicable procedures, then the appeal should be considered and any development affected by the appeal should be allowed to proceed.” (Emphasis added)

This response mistakenly assumes the infallibility of staff to make dispassionate assessments and decisions regarding appeals challenging the correctness of their own decisions. Staff actions relating to the Life Austin outdoor amphitheater case completely undercut the above quote.

Under Title 23, staff, whose decisions would be appealed, is the gatekeeper as to whether a BOA Appeal is forwarded to the board of adjustment. What is the appellant’s remedy if the staff decision not to forward the appeal is wrong? For my neighborhood, it was three years of litigation: Cause No. D-1-GN-12-000878; *Hill Country Estates Homeowners Association, and Covered Bridge Property Owners Association, Inc. v. Greg Guernsey and The City of Austin*; In the 250th Judicial District Court of Travis County, Texas. City staff filed a Plea to the Jurisdiction claiming the two associations did not even have standing to sue the City over the refusal to forward the October 2011 BOA Appeal to the board of adjustment. After the trial court granted the City’s Plea to the Jurisdiction, the court of appeals ruled the trial court could not decide on whether the plaintiffs had standing to sue the City until the board of adjustment decided whether the appellants (my neighborhood) had standing. Case NO. 13-13-00395-CV, Thirteenth Court Of Appeals of Texas, Corpus Christi, Texas, *Hill Country Estates Homeowners Association, And Covered Bridge Property Owners Association, Inc., Appellants v. Greg Guernsey And The City Of Austin, Appellees.*

City staff finally forwarded the October 2011 BOA Appeal to the board of adjustment in September 2015. At its December 9, 2015 special called meeting the board of adjustment did determine that the appellant associations had standing to appeal in BOA Appeal cases C15-2015-0147. At the board of adjustment hearing, Staff did not argue the appellants lacked standing before the board of adjustment.

A person whose decision is being challenged by a BOA Appeal is not a disinterested party. Giving the responsible director the authority to decide whether the BOA Appeal will even be “accepted” by the City is a clear violation of the due process rights provided by Chapter 211.

Staff needs to explain why it should be authorized to limit the scope of the Board of Adjustment’s statutory authority without violating the separation of powers embedded in Chapter 211. More importantly, staff needs to explain why it should be authorized to abridge the rights of aggrieved parties to file a BOA Appeal under Chapter 211.

The most reliable way to bring the City into compliance with Section 211.010(b), TLGC is to require appeals to the board of adjustment to be filed with the City Clerk’s Office. The City Clerk’s Office should and can function like a court clerk. The City Clerk’s Office can forward the appeal to City staff supporting the board of adjustment who can then forward a copy to the appropriate director. The City Clerk can then send notice of the appeal to the chair of the board of adjustment.

AVOIDANCE OF CHAPTER 211 AUTOMATIC STAY

Section 23-2I-2040(B) allows an applicant for a Site Plan or Building Permit that is subject to Appeal to process changes to the application as an administrative correction, without further notification, in order to address zoning related issues raised in an Appeal or by comments submitted from interested parties under Section 23-2I-1020 (Appeal of Administrative Decisions).” This provision runs afoul of Section 211.010(c), Texas Local Government Code: “An appeal stays all proceedings in furtherance of the action that is appealed . . .” That is, City staff is prohibited from taking any further action relating to the appealed decision until the board of adjustment rules on the appeal. The text of the proposed Section 23-2I-2040(B) does not comply with this statutory requirement. It also appears to authorize staff to negotiate with an applicant a resolution of an appeal without involving the appellant.

APPEAL PROCEDURES UNDER DIVISION 23-4B-2

Even though Article 23-2I purports to be the controlling provision regarding appeals, a significant limitation on the right to appeal zoning related administrative decisions is found in Division 23-4B-2. The second sentence of Section 23-4B-2030(A) states:

“If the code interpretation or use determination is not appealed or is upheld by the Board on appeal, a subsequent decision by the Planning Director to approve or disapprove a development application associated with the interpretation or determination may not be appealed under this Section.”

Similar language is found in the second sentence of Section 23-4B-2010(B)(3).

These sentences are problematic for several reasons. First, Chapter 211 authorizes an aggrieved person to appeal **any** administrative decision relating to zoning. *Ballantyne v. Champion Builders, Inc.*, 144 S. W. 3d 417, 426 (Tex. 2004). Second, if there is no public notice of the initial decision, then potential aggrieved parties will never have the opportunity to appeal to the board of adjustment. Third, initial staff interpretations and determinations often change or “evolve.” For example, in the LifeAustin amphitheater case, the initial informal and private land use determination issued in December 2008 stated “I understand that the educational and musical presentations will be limited in scope and will be subordinate to the primary religious assembly use.” The restrictive covenant approved by staff in September 2011 for the amphitheater states that “musical or theatrical performances” are permitted as a religious assembly use. The “limited in scope and subordinate to religious assembly use” limitation in the initial private determination had been removed. Staff refused to forward the appeal of the approval of the restrictive covenant, in part, asserting that the terms of the 2011 restrictive covenant were the same as the 2008 informal determination.

As drafted, the second sentence of Section 23-4B-2030(A) gives staff broad, unappealable power to modify its code interpretations and use determinations within the context of specific project application. Modifying a previous decision is, in fact, a new administrative decision that is subject to appeal under Chapter 211. The board of adjustment and not staff should have the authority to decide whether a new decision has been made.

EX PARTE CONTACTS PROHIBITED

Section 23-2I-2050 extends the current board of adjustment rule of prohibiting ex parte contact between a board member and a member of the public to all board and commissions hearing

an appeal. Section 23-2I-2050(B) limits the public's right to communicate to a board or commission member to only during a public hearing. Under Section 23-2I-2050(C), a board or commission member is disqualified from participating in the case for receiving material information that is not made available to other board members and to interested parties. If the board of adjustment and all other boards and commissions were truly courts of law, then the proposed Section 23-2I-2050 prohibitions would be appropriate. In the context of a BOA Appeal, Section 23-2I-2050 does not apply to one party to the appeal--City staff. City staff, and in particular, the City Legal Department can communicate with board of adjustment members at any time and in executive session. It is an inherent conflict of interest for the Legal Department to represent City staff with respect to the administrative decision the subject of a BOA Appeal and then go into executive session with the board of appeal. The BOA Appeal process is not transparent when the board of adjustment makes decisions based on legal advice that is kept from the public. As proposed, Section 23-2I-2050 would limit public input in non-BOA Appeals and would make City staff the only conduit for information provided to the board or commission and would effectively provide City staff the opportunity to have the last word on an issue.

In sum, Title 23 would authorize staff to 1) decide who may appeal an zoning related administrative decision; 2) control the flow of information to the board or commission hearing the appeal; 3) have non-public discussions with the board or commission; and 4) without challenge of a BOA Appeal, change or modify a previous zoning related administrative decision relating to a project application.

OUTDOOR ENTERTAINMENT AND TEMPORARY USES

“Temporary Use” is defined in Title 23 as “Short term activities that are not allowed on a permanent basis but because of their temporary non-permanent intermittent or seasonal nature are acceptable.”

According to Table 23-4B-1050(A), “an outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a large audience” is a temporary use. Table 23-4B-1050(A) does not include the following limitation that appears in Section 25-2-921(C): “an outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a large audience may be permitted as a temporary use under this division if: (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning

district; (2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or (3) for an exhibit, the use is located in a GR or less restrictive zoning district.” As drafted, Chapter 23-4 allows any parcel of land within the City to be used for large outdoor gatherings of people without any notice to the adjoining landowners or the public.

Through administrative interpretation/amendment, staff has already amended Section 25-2-921(C) by determining religious assembly and educational facilities in SF-4 and more restrictive districts have a right to hold outdoor gatherings without a temporary use permit. In 2012, staff requested a code amendment to Section 25-2-921(C) to authorize staff to issue Temporary Outdoor Assembly Permits for religious assembly and educational facilities. Code Amendment Case C20-2012-016. In October 2013, staff released a new draft of the proposed code amendment that would exempt religious assembly properties completely from Section 25-2-291(C). After some public complaint about staff making a material change to the proposed code amendment after all public hearings had been closed, staff issued a November 18, 2013 memorandum to the City Council withdrawing the proposed code amendment because staff determined the amendment wasn't really needed. The memorandum stated religious assembly and educational facilities located in SF-4 and more restrictive districts had the right to hold large outdoor gatherings of people without any permit.

Two neighborhood associations filed a BOA Appeal challenging the code interpretation in the November 18, 2013. The Legal Department refused to forward this appeal to the board of adjustment claiming advice given during a legislative proceeding did not constitute a “decision” subject to a BOA Appeal. In May 2014, an east Austin resident complained to the City about an outdoor music event being held at a church located in a SF-3 zoning district. City staff cited the November 18, 2013 memorandum as the official determination that large outdoor gatherings and events could occur at this church. Details of staff's reinterpretation of Section 25-2-921(C) can be found in the evidentiary records of BOA Appeal case C15-2015-0147.

My only request on the temporary use permit issue is that the community have the opportunity to have an informed discussion on this significant change to the City's zoning regulations.

Please do not hesitate to contact me if you have any questions regarding the issues raised in my letter.

Sincerely,



Robert J. Kleeman

RJK/dm

cc: Planning Commission
Zoning and Platting Commission

C. BOARD OF ADJUSTMENT/SIGN REVIEW BOARD

Overview

The BOA is authorized by Article 2, §2-1-111 of the City's Code of Ordinances. It is a seven-member (7) Board consisting of Members who serve two-year, staggered terms.

The BOA hears requests for zoning variance requirements, airport zoning regulations, certain signage regulations and special exceptions. The Board also hears and decides appeals on Administrative Use Decisions made by staff in the Current Planning Division.

Meetings are held on the second Monday of each month, at 5:30 pm. Special Meetings are also held to discuss administrative processes and other matters. A review of a sampling of these Special Meeting agendas revealed that the Law Dept. is currently drafting a BOA Guide Book, which is good.

We reviewed a sampling of the Agendas, which are posted online, and found that they contained special exception and signage variances, as well as a significant volume of variance requests. There were no Use Determination Appeals on the Agendas for the last several months, which staff indicated is the norm, as very few appeals are heard annually.

Agendas are full, however Staff indicated that special meetings are scheduled when deemed necessary to accommodate special projects and peaks in activity. Minutes are up-to-date and presented as a summary (e.g., motion, voting). They are posted online along with video recordings of meetings, both of which are consistent with best practice. The July 2014 Minutes provided a tally of all cases and decisions made to date, which is an excellent resource.

BOA Bylaws and procedural rules, meeting dates and schedules, and staff supporting the Board are posted online along with BOA member contact information, which is also a best practice.

The Chair of the Board does a good job in ensuring the meetings are run efficiently and in accordance with the established procedures and by-laws. The city provides staff support from the Planning and Development Review Department and City Attorney's Office.

Annual Internal Review Report

An Annual Internal Review Report is prepared for the BOA that provides an overview of the Board's efforts and accomplishments in supporting/fulfilling its mission and charge, which is excellent. This report is posted online on the City's website.

Joint Study Sessions with City Council

Interviewees indicated that the BOA does not meet jointly with City Council at regular intervals to ensure that the Council and BOA are in alignment and discuss and resolve policy issues. This will be particularly important with the new City Council under the reorganized government. It is also essential that clear lines of authority be established.

436. Recommendation: The City Manager and the Development Services Manager for the Current Planning Division should schedule bi-annual joint study session meetings between the BOA and the City Council.

Process Issues

Reviewing past agendas reveals that most meetings have a significant number of requests to postpone agenda items. These postponements are typically at the applicant's request in order to provide them with additional time to address either previous comments from Board members or comments that have been voiced by interested neighbors. However, in some cases items are postponed because staff failed to adhere to the minimum public noticing requirements established by the Code. These staff generated postponements can have a significant impact on applicants and other interested parties who have arranged their schedules to attend the advertised meetings. The process to assure the proper noticing of public meetings needs to be closely monitored for compliance in order to avoid inconveniencing the public and undermining the City's credibility.

437. Recommendation: Staff assigned to support the Board of Adjustments/Sign Review Board should establish monitoring points to ensure that public notices are being properly processed. As part of this increase the supervision and training for this function.

Training

We received feedback that additional specialized training is needed for new BOA members and that on-going training is needed for existing members, so that they more fully understand the various application processes under their purview and the scope of review associated with each.

See our training recommendation under the Planning Commission and Zoning and Platting Commission heading, below.

Key Issues

The Chair of this Committee indicated that he was displeased with the level of staff support the Board was receiving. A review of recent Board agendas and viewing the video of one of their meeting indicated that many items of the agenda had to be postponed because they either failed to notify all of the required neighbors or they failed to get the notices out on time. In addition, there is no technical review of the applications by planning staff so frequently the applications have major deficiencies that the Board members feel they have to identify while performing a plan review during the open meeting. There is a general belief that the role of the Board has become to grant variances as a way to compensate for staff errors regardless of whether the circumstances actually support granting a variance. The Chair also states that frequently the application fails to cover all of the items that the applicant will eventually need to have approved before they can build. This seems to be the antithesis of what the DAC was created to address. There appears to be very little filtering of applications by staff before they are allowed to go on the agenda.

438. *Recommendation:* **Require a review by technical staff and a staff report to accompany each application. Review should include review by other in DAC to confirm the applicant has included all of the items they will need considered in their application.**

439. *Recommendation:* **Increase the fee charged to accommodate the additional staff work.**

440. *Recommendation:* **Consider reassigning the support for this Board to another group, perhaps Current Planning.**

D. BUILDING AND FIRE CODE BOARD OF APPEALS

Profile

The Building and Fire Code Board of Appeals is charged with the responsibility to hear appeals filed in accordance with the Land Development Code and to decide appeals of orders, decisions or determinations made by the building official relating to the application and interpretations of the Building Code and Fire Code as adopted by

RESOLUTION

WHEREAS, the Board of Adjustment is a Sovereign board established by City Council pursuant to Chapter 211 of the Texas Local Government Code and;

WHEREAS, The Board of Adjustment derives its authority from state law as well as City Code 2-1-111 and Chapter 25-2, Zoning, to uphold, amend, and overturn administrative zoning related decisions when appealed by an aggrieved person or entity and;

WHEREAS, under section 211.010(b) of the Texas Local Government Code and the present City Code Chapter 25-2, the Board of Adjustment is authorized to adopt its own rules and to determine whether a person's Interpretation Appeal will be heard by the Board of Adjustment and;

WHEREAS, under Chapter 211, the deadline for filing a Board of Adjustment Appeal is determined by the Board based on the rules of the Board and;

WHEREAS, City staff has authority to implement a zoning code that necessarily involves interpreting the zoning code, which then is subject to review by the Board of Adjustment when an appeal is filed and;

WHEREAS, to maintain its integrity and independence, the Board of Adjustment has adopted a rule prohibiting all *ex parte* communications between Board members and interested parties and their representatives regarding a case before the Board of Adjustment and;

WHEREAS, City staff is undeniably an interested party in all Interpretation Appeals submitted to the Board of Adjustment and;

WHEREAS, the City Legal Department represents City staff and;

WHEREAS, at Board of Adjustment Interpretation Appeal hearings, the City Legal Department also serves as legal counsel to the Board of Adjustment and;

WHEREAS, in arrogation of the Board of Adjustments statutory authority, the City Legal Department currently reviews all submitted Interpretation Appeals and decides on its own whether the Interpretation Appeal will be accepted for filing and forwarded to the Board of Adjustment and;

WHEREAS, on occasion, the Board of Adjustment has gone into executive session with the City Legal Department to discuss an *ex parte* Interpretation Appeal pending before the Board of Adjustment and;

WHEREAS, the City Legal Department's representation of City staff and the Board of Adjustment on the same matter constitutes the appearance of a conflict of interest, detrimental to both the rights of the appellant and the public trust in the Interpretation Appeal process and;

WHEREAS, the above described practices have precipitated a broadly held public perception that the City Legal Department shields City staff decisions from proper statutorily authorized citizen oversight, thus creating a non-transparent, unfair, and unaccountable regulatory environment.

Therefore, be it RESOLVED:

1. BOA should immediately amend its Bylaws and/or Rules of Procedure to have Interpretation cases filed directly with the city clerk, officially date and time stamped upon receipt and immediately copied to the Chairman of the Board of Board of Adjustment and interested parties to have the Board of Adjustment determine standing, completeness and timeliness, and all other matters;
2. The BOA should retain independent legal counsel as it is an inherent conflict of interest for the Legal Department to represent City Staff with respect to an administrative decision, the subject of a Board of Adjustment Appeal, and then advise or go into executive session with the Board of Adjustment relating to that appeal and,
3. City legal department should not attend BOA Executive sessions. City legal is rightfully counsel to the defendant of the interpretation (COA) and their attendance would constitute ex parte communications with the BOA, creating an appearance that the Board of Adjustments Appeal process is not transparent, fair or accountable when the Board of Adjustment makes decisions based on City Legal advice that is kept from the public.

Ramirez, Diana

From: Heldenfels, Leane
Sent: Friday, March 23, 2018 4:49 PM
To: william@██████████
Cc: Ramirez, Diana
Subject: RE: Nov meeting date (alternate to Veteran's Day Holiday, Mon 11/12)

Correct – Tues 11/6 is election night. But I'll put both dates on the 4/9 new business just in case....

Thanks,
Leane

From: william@██████████ [mailto:william@██████████]
Sent: Friday, March 23, 2018 4:31 PM
To: Heldenfels, Leane
Subject: Re: Nov meeting date (alternate to Veteran's Day Holiday, Mon 11/12)

Ah, that's right; since it's the night before election I'd like to keep that on as a discussion item. If it were Tuesday night election night I'd say maybe not.

Thanks,

William Burkhardt
512 750 6580

----- Original message-----

From: Heldenfels, Leane
Date: Fri, Mar 23, 2018 16:24
To: William Burkhardt;
Cc: Ramirez, Diana;
Subject: RE: Nov meeting date (alternate to Veteran's Day Holiday, Mon 11/12)

Ok – will offer both again.

I think 11/5 was "out" for some since it will be the day before the Nov. 6 election and they planned on volunteering/electioneering that day.

Leane

From: William Burkhardt [mailto:william@██████████]
Sent: Friday, March 23, 2018 4:17 PM
To: Heldenfels, Leane
Cc: Ramirez, Diana
Subject: RE: Nov meeting date (alternate to Veteran's Day Holiday, Mon 11/12)

I forget why we had an objection to 11/5; lets re-discuss 11/5 along with 11/8 at the April meeting.

William

From: Heldenfels, Leane [<mailto:Leane.Heldenfels@austintexas.gov>]
Sent: Friday, March 23, 2018 3:06 PM
To: William Burkhardt <william@>
Cc: Ramirez, Diana <Diana.Ramirez@austintexas.gov>
Subject: Nov meeting date (alternate to Veteran's Day Holiday, Mon 11/12)

Hi William – see below from City Clerk office staff, too, regarding November dates.

Only one that we can get aside from Mon 11/5 that was objected to is TH 11/8.

So, Diana will put that as information on New Business for the Board to vote on at the 4/9 meeting since no other choice(s).

Let me know if you have other thoughts – I assumed “no” for Fridays – but can put those Nov. Fridays as choices, too, if you’d like.

Thanks –

Leane

From: Cruz, Theresa
Sent: Friday, March 23, 2018 2:54 PM
To: Heldenfels, Leane
Subject: RE: Board of Adjustment

November is pretty full because people are trying to hold their last meetings before they break for the holidays. Especially with that time slot. I think the only other day I saw was on a Friday. Let me know and I will book it if you want.

From: Heldenfels, Leane
Sent: Friday, March 23, 2018 2:48 PM
To: Cruz, Theresa <Theresa.Cruz@austintexas.gov>
Cc: Ramirez, Diana <Diana.Ramirez@austintexas.gov>
Subject: RE: Board of Adjustment

Can I keep this date (Th 11/8) and then see if there are any other dates in Nov. where this combination of Chambers and exec session room from 5p-10:30p exist?

Thanks – sorry to be so complicated –

Leane

-----Original Appointment-----

From: Cruz, Theresa **On Behalf Of** City Hall Chamber - Room 1001

Sent: Friday, March 23, 2018 10:57 AM

To: Ramirez, Diana; Heldenfels, Leane; ~~NOCCMC; [REDACTED]~~

Subject: Board of Adjustment

When: Thursday, November 08, 2018 5:00 PM to Friday, November 09, 2018 12:00 AM (UTC-06:00) Central Time (US & Canada).

Where: Diana Ramirez [512-974-2241](tel:512-974-2241)

Please check out a clamshell from the security desk in the atrium to validate your guests parking. Send an email to Building.Services@austintexas.gov with dates and time for your meeting to have an additional table set up for parking validations.

Meeting name: BOA

Meeting room requested: Council Chambers

Date needed: 11/08/2018

Start/End meeting time: 5:30pm-11:30pm (please include additional AV setup/tear down time if needed)

Contact name and phone number: Diana Ramirez [512-974-2241](tel:512-974-2241)

Who may be listed as a back-up contact? Leane Heldenfels 512-974-2202

Number of People: 50+

Will food to be served? no

AV assistance needed? yes

City department hosting event: DSD

Will a caterer be serving food/drinks on property? No

Meeting amended as requested by Theresa Cruz on 03/23/2018

From: [REDACTED]
To: [Heldenfels, Leane](#)
Subject: case #C16-2018-0003, 414 MARTIN LUTHER KING BLVD
Date: Tuesday, April 03, 2018 10:34:37 AM

Name - Charles Schmitz

Affected Address - 1801 Lavaca St. #515

I object to this proposal. Building codes need to be enforced to insure a more homogeneous feel and appearance to the neighborhood. Allowing this variance to add three large electric signs would be to allow an eyesore which would detract from the appeal of the neighborhood! Please don't approve this variance!

Regards,
Charles Schmitz

From: [Redacted]
Date: [Redacted]

Hi Leane,

Please find my comments below.

Best,
Tyler

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Case Number: C16-2018-0003, 414 Martin Luther King Blvd.
Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, April 9, 2018

Tyler Markham

Your Name (please print)

I am in favor
 Object

1800 Lavaca St. #402

Your address(es) affected by this application

[Signature]

Signature

4/6/2018

Date

Daytime Telephone: *512-993-6777*

Comments: *Digital signs are a nuisance on the eye in residential areas and ought to be kept away whenever possible*

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Mail: City of Austin-Development Services Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be received in time for the hearing.)

Fax: (512) 974-6305

Email: leane.heldenfels@austintexas.gov

Tyler

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Case Number: C16-2018-0003, 414 Martin Luther King Blvd.
Contact: Leane Heldenfels, 512-974-2202, leaneheldenfels@austintexas.gov
Public Hearing: Board of Adjustment, April 9, 2018

I am in favor
 I object

STEVEN L. NASH

Your Name (please print)

1800 LANVACA UNIT 311

Your address(es) affected by this application

Steven L. Nash 4-2-2018

Signature

Date

Daytime Telephone: 512-755-5627

Comments:

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P. O. Box 1088
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Fax: (512) 974-6305

Email: leaneheldenfels@austintexas.gov

From: [REDACTED]
Subject: C16-2018-0008/E. 414 Martin Luther King Jr Blvd
Date: Thursday, March 29, 2018 2:55:50 PM

Hi Leane,

We would like to request a one month postponement of case C16-2018-0008 (414 E Martin Luther King Jr Blvd) at the Board of Adjustment to May 14, 2018.

Thank you,
Lynn Ann

<p>Lynn Ann Carley, P.E. Senior Land Development Consultant Armbrust & Brown, PLLC 100 Congress Avenue, Suite 1300 Austin, Texas 78701-2744 (512) 435-2317 - Direct (512) 435-2360 - Facsimile [REDACTED] [REDACTED]</p>	 <p>The logo for Armbrust & Brown PLLC features a teal parallelogram above the company name 'Armbrust & Brown' in a bold, sans-serif font. Below the name is a thin yellow horizontal line, and the letters 'PLLC' are positioned to the right of the line.</p>
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Case Number: C16-2018-0003, 414 Martin Luther King Blvd.
Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, April 9, 2018

LESLIE E. BAELINE

Your Name (please print)

505 W 187th ST

Your address(es) affected by this application

Leane Heldenfels

Signature

I am in favor
 I object

4-7-18

Date

Daytime Telephone: 512-217-4869

Comments: RULES + REGULATIONS HAVE BEEN ESTABLISHED BASED ON RATIONAL THOUGHT YEARS AGO - THESE PEOPLE HAVE BEEN CHIPPING AWAY AT THESE RULES SINCE THIS PROJECT STARTED - ENOUGH!

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 Leane Heldenfels
 P. O. Box 1088
 Austin, TX 78767-1088

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Fax: (512) 974-6305
Email: leane.heldenfels@austintexas.gov

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Public Hearing: Board of Adjustment, April 9, 2018

LESLIE E. BAELINE

Your Name (please print)

505 W 187th ST

Your address(es) affected by this application

Leane Heldenfels

Signature

I am in favor
 I object

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Case Number: C16-2018-0003, 414 Martin Luther King Blvd.

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

Fowell-Corbett LLC
 Your Name (please print)

I am in favor
 I object

2007 Guadalupe St
 Your address(es) affected by this application

Alan R. Corbett, Jr. 4-2-13
 Signature Date

Daytime Telephone: _____

Comments: _____

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Case Number: C16-2018-0003, 414 Martin Luther King Blvd.

Contact: Leane Heldenfels, 512-974-2202, leaneheldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

Jowell-Corbett LLC
Your Name (please print)

<input checked="" type="checkbox"/> I am in favor
<input type="checkbox"/> I object

2007 Guadalupe St
Your address(es) affected by this application

Wm R. Corbett Jr R. 4-2-18
Signature Date

Daytime Telephone: _____

Comments: _____

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Case Number: C15-2018-0011, 2706 Norris Drive

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

Mary Dorey Cartwright
Your Name (please print)

I am in favor
 I object

1715 Norris Dr.

Your address (except affected by this application)

Mary Dorey Cartwright
Signature

4/6/18
Date

Daytime Telephone: 512-466-3637

Comments: *They have been so*

careful re: the protected

franchise to prevent

classroom use.

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Case Number: C15-2018-0011, 2706 Norris Drive

Contact: Leane Heldenfels, 512-974-2202, leaneheldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

<input type="checkbox"/> I am in favor
<input checked="" type="checkbox"/> I object

Your Name (please print)
Chris Elliott

Your address(es) affected by this application
1705 Rabb Road Austin 78704

Your address(es) affected by this application
4/04/2018

Date

Signature

Daytime Telephone: *(512) 480-5720*

Comments: *My family's house is most directly affected by the structure in question. It sits less than 3' behind our back fence, which we built high enough to screen previous structures. The structure towers over our back yard. I do not see that the structure meets the SOA's criteria for a variance. With that said, we are selling our house and are concerned that the structure's presence will affect our resale value which is why we are objecting. A reasonable compromise might be to postpone a decision until we find out if our fears are realized.*

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Mail: City of Austin-Development Services Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be seen by the Board at this hearing.)

Fax: (512) 974-6305

Email: leaneheldenfels@austintexas.gov



NOTIFICATIONS

CASE#: C15-2018-0011
 LOCATION: 1706 Norris Drive



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

1" = 109'

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NOTICE OF PUBLIC HEARING LAND DEVELOPMENT CODE VARIANCE

Este aviso es para informarle que hemos recibido una solicitud para una varianza dentro de una distancia de 500 pies de su propiedad. Si usted desea recibir información en español, por favor llame al (512) 974-2193.

Mailing Date: March 29, 2018

Case Number: C15-2018-0011

Please be advised that the City of Austin has received an application for a variance from the Land Development Code.

Applicant:	Blayne & Stacy Mozisek, (979) 255-7553
Owner:	Same
Address:	1706 NORRIS DR

Variance Request(s): The applicant has requested variance(s) from Section 25-2-492 (D) (*Site Development Regulations*) to decrease the minimum rear yard setback from 10 feet (required) to 1.7 feet (requested, previous 1-story storage structure) in order to maintain a recently constructed 237 square foot 2-story (more than 15 feet tall) storage and playhouse structure in a "SF-3", Family Residence zoning district.

(**Note:** The Land Development Code permits accessory structures up to 15' in height to be 5 feet from the rear property line in a single family zoning district, however the structure in consideration exceeds that height limitation.)

This application is scheduled to be heard by the **Board of Adjustment** on **Monday April 9, 2018**. The meeting will be held at **City Hall, 1st Floor**, 301 West 2nd Street beginning at **5:30 PM**.

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Case Number: C15-2018-0011, 2706 Norris Drive

Contact: Leane Heldenfels, 512-974-2202, leaneheldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

<input type="checkbox"/> I am in favor
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Your Name (please print)
Chris Elliott

Your address(es) affected by this application
1705 Rabb Road Austin 78704

[Signature] Date
4/04/2018

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NOTIFICATIONS

CASE#: C15-2018-0011
 LOCATION: 1706 Norris Drive



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Case Number: C15-2018-0011, 2706 Norris Drive

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

Mary Chris Fire Reed
Your Name (please print)

<input checked="" type="checkbox"/> I am in favor
<input type="checkbox"/> I object

1709 Norris Dr.

Your address(es) affected by this application

Mary Christa Reed

Signature

4-1-18

Date

Daytime Telephone: 512-585-8809

Comments: I am in favor of Varian 18. The structure they built is a vast improvement over the prior structure and blends in well with the neighborhood.

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Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

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Fax: (512) 974-6305

Email: leane.heldenfels@austintexas.gov

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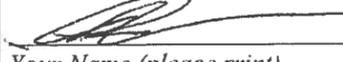
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Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018


Your Name (please print)

Stuart Stein

<input type="checkbox"/> I am in favor
<input checked="" type="checkbox"/> I object

Your address(es) affected by this application

1706 Rabb Road Austin Tx 78704

Signature

Daytime Telephone: 512-611-6659

4/9/18

Comments: I object to this Variance. I think this structure sets a bad precedent in the neighborhood. This structure was built years ago without a permit. If we let this one slide others will build whatever they want. The owners of this structure should reduce the height to one story at least, so it does not look

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Fax: (512) 974-6305

Email: leane.heldenfels@austintexas.gov

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Case Number: C15-2018-0011, 2706 Norris Drive 1706
Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, April 9, 2018

Betty Lou Hargis
Your Name (please print)

I am in favor
 I object

1711 NORRIS DRIVE
Your address(es) affected by this application

Betty Lou Hargis 04/04/18
Signature Date

Daytime Telephone: 512-442-5041

Comments: BELIEVE THE ADDRESS IS

1706 NORRIS DRIVE NOT

2706 " "

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Public Hearing: Board of Adjustment, April 9, 2018

Betty Lou Hargis
 Your Name (please print) I am in favor
 I object

1711 NORRIS DRIVE
 Your address(es) affected by this application

Betty Lou Hargis *04/04/18*
 Signature Date

Daytime Telephone: *512-442-5041*

Comments: _____

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GREG PITZEN

Your Name (please print)

I am in favor
 I object

2110 WALCOTT ST

Your address(es) affected by this application

[Signature]

Signature

4-5-18

Date

Daytime Telephone: 512-844-7150

Comments:

I DON'T BELIEVE IN
SET BACK REQUIREMENTS.
THEY ARE A WASTE OF
VALUABLE LAND.

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Email: leane.heldenfels@austintexas.gov

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Case Number: C15-2018-0011, 2706 Norris Drive
Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, April 9, 2018

Chris Elliott

Your Name (please print)

I am in favor
 I object

1705 Rabb Road Austin 78704

Your address(es) affected by this application

[Signature]

Signature

4/04/2018

Date

Daytime Telephone: *(512) 480-5720*

Comments: *My family's house is most directly affected by the structure in question. It sits less than 3' behind our back fence, which we built high enough to screen previous structures. The structure towers over our back yard. I do not see that the structure meets the BOA's criteria for a variance. With that said, we are selling our house and are concerned that the structure's presence will affect our resale value, which is why we are objecting. A reasonable compromise might be to postpone a decision until we find out if our fears are realized.*

Comments must be returned by 10am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mail: City of Austin-Development Services Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be seen by the Board at this hearing.

Fax: (512) 974-6305

Email: leane.heldenfels@austintexas.gov



Date: April 4, 2018

TO: Board of Adjustment

Subject: 1605 S. 3rd Street Variance Request

Committee Members,

The Bouldin Creek Neighborhood Association at it's April 2 Steering Committee meeting voted to support the applicant's variance request to include the two homes immediately adjacent to the North of 1605 S. 3rd Street in the calculations for setback averaging in determining the front setback at 1605 S. 3rd Street.

Sincerely,

A handwritten signature in black ink that reads "Paul Strange". The signature is written in a cursive, flowing style.

Paul Strange
VP External Affairs and Zoning Chair

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Case Number: C15-2018-0012, 1605 S. 3rd St.

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, Monday April 9, 2018

Janet Dunkelberg

Your Name (please print)

I am in favor
 I object

800 W. Annie St.

Your address(es) affected by this application

Janet Dunkelberg

Signature

4-1-18

Date

Daytime Telephone: *512-413-9534*

Comments:

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Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, Monday April 9, 2018

DAVID LaPier

Your Name (please print)

I am in favor
 I object

800 W. Annie St - 78704

Your address(es) affected by this application



Signature

4-2-18

Date

Daytime Telephone: _____

Comments: _____

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Public Hearing: Board of Adjustment, Monday April 9, 2018

Janet Dunkelberg

Your Name (please print)

I am in favor
 I object

800 W. Annie St.

Your address(es) affected by this application

Janet Dunkelberg

Signature

4-1-18

Date

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Case Number: C15-2018-0012, 1605 S. 3rd St.

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, Monday April 9, 2018

DAVID LaPier

Your Name (please print)

I am in favor
 I object

800 W. Annie St - 78704

Your address(es) affected by this application



Signature

4-2-18

Date

Daytime Telephone: _____

Comments: _____

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Case Number: C15-2018-0012, 1605 S. 3rd St.

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, Monday April 9, 2018

Thomas Solis

Your Name (please print)

801 Jewell St.

Your address(es) affected by this application

[Signature]
Signature

<input checked="" type="checkbox"/> I am in favor
<input type="checkbox"/> I object

04-01-18
Date

Daytime Telephone: *512-970-89-13*

Comments: _____

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Case Number: C15-2018-0014, 3401 Blue Jay Lane
Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, Monday April 9, 2018

PAUL GERDES
Your Name (please print)

I am in favor
 I object

3406 BLUE JAY LANE
Your address(es) affected by this application

Paul Gerdes
Signature

4/11/2018
Date

Daytime Telephone: 512 689 7713

Comments: _____

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Contact: Leane Heldenfels; 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, Monday April 9, 2018

Debra Groom
 Your Name (please print) I am in favor
 I object

3404 Oriole CV, Austin, TX 78732
 Your address(es) affected by this application

Debra Groom *4-9-18*
 Signature Date

Daytime Telephone: *512-825-6980*

Comments: *I think it is fair to allow a 25' setback.*

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Email: leane.heldenfels@austintexas.gov

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Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, Monday April 9, 2018

Kathy Devine

Your Name (please print)

5404 Oriole CV, Austin, TX 78732

Your address(es) affected by this application

Kathy Devine

Signature

4/9/18

Date

Daytime Telephone: 512.940.0841

Comments:

I am in favor
 I object

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Case Number: C15-2018-0014, 3401 Blue Jay Lane

Contact: Leane Heldenfels, 512-974-2202, leana.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, Monday April 9, 2018

MARY ANN BAKER

Your Name (please print)

13913 Hummingbird Ln, Austin 78733

Your address(es) affected by this application

Mary Ann Baker

Signature

Date

4-7-18

Daytime Telephone: 512-636-4739

Comments:

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Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. **All comments received will become part of the public record of this case.**

Case Number: C15-2018-0014, 3401 Blue Jay Lane

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, Monday April 9, 2018

Your Name (please print)
Leane Williams

<input checked="" type="checkbox"/> I am in favor
<input type="checkbox"/> I object

Your address(es) affected by this application
14001 Hummingbird Ln, Austin, TX 78732

Signature
Leane Williams

Date

Daytime Telephone: 512-658-8561

Comments:

Comments must be returned by 10am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mail: City of Austin-Development Services Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be seen by the Board at this hearing)

Fax: (512) 974-6305

Email: leane.heldenfels@austintexas.gov



March 28, 2018

VIA EMAIL: [REDACTED]

Robert Kleeman
Sneed, Vine & Perry
900 Congress Avenue, Suite 300
Austin, Texas 78701

**Re: LifeAustin Church, the Hill Country Estates Home Owners Association and
the Covered Bridge Property Owners Association**

Dear Robert:

The purpose of this letter is to invoke Paragraph 6d of the Agreement Regarding the Use of LifeAustin Property and LifeAustin Amphitheatre, dated December 12, 2016 (“the Agreement”). As you know, the Church has been working diligently to complete the Sound Mitigation Improvements by the agreed deadline of April 4, 2018. Despite making every effort to complete installation of the Sound Mitigation Improvements by the deadline, the Church will be unable to do so due to force majeure—circumstances beyond its control related to construction delays.

The only Sound Mitigation Improvement that remains to be installed is the West Sound Screen. The Church had anticipated delivery of the West Sound Screen louvers from the manufacturer this week. Yesterday, the Church learned that they will not be available for shipment until April 4, 2018. While the fabrication of the louvers is complete, the manufacturer has been unable to complete painting of the louvers. Due to this manufacturer delay, over which the Church had no control, the Church now anticipates delivery of the louvers on April 6, 2018. Once the Church has received the West Sound Screen Louvers, they estimate three days for installation. The Church is committed to completing installation of the sound mitigation measures as quickly as is reasonably possible, given the manufacturing delay.

Again, this delay is beyond the Church’s control, despite their tireless attempt to complete construction and installation of the Sound Mitigation Improvements on time. As such, the Church is invoking the force majeure provision of the Agreement. *See* Agreement ¶ 6d. The Agreement contemplates extensions of the deadline to complete the Sound Mitigation Improvements for force majeure. For purposes of the Agreement, “force majeure” includes “delays . . . for the purposes of . . . construction.” Agreement ¶ 2i.

Obviously, this development is disappointing to our respective clients. All parties had hoped that the appeals currently pending before the Austin Board of Adjustment could be



March 28, 2018
Page 2

dismissed at the upcoming meeting on April 9, 2018. It now seems unavoidable that we must ask for one more postponement.

It has also come to my attention that you would like to address the Board of Adjustment regarding the City of Austin's CodeNext project, in the context of assisting the Board of Adjustment in offering comments to the City of Austin on certain portions of the City Code that may be rewritten. To be clear, we see any testimony you might offer to the Board of Adjustments on the CodeNext project as unrelated to your clients' currently pending appeals regarding the Church's Amphitheatre. The parties have reached a settlement agreement and are continuing to operate according to the terms of that settlement agreement. We trust that you have no desire to put the settlement agreement in jeopardy. Further, we do not believe that anything you might say to the Board of Adjustment would be binding on the Board of Adjustment, the City of Austin, or a court of law. For these reasons, the Church has no issue with you offering your comments to the Board of Adjustment regarding the CodeNext project.

In light of these circumstances, the Church makes the following proposal:

1. Your clients accept the Church's assertion of force majeure, subject to the expectation that the West Sound Screen louvers will be delivered to the Church on or before April 11, 2018 and with the understanding that the Church will diligently pursue completion of the sound mitigation measures as quickly as is reasonably possible under the circumstances, subject to any further delays for force majeure that may arise;
2. The parties agree to postpone the appeals currently pending before the Board of Adjustment to the May 14, 2018 Board of Adjustment meeting; and
3. Council for the Church will notify Board of Adjustment staff that it has no objection to your public presentation regarding CodeNext related issues, with the understanding that it is not your intent to relitigate issues resolved by the Agreement or seek any ruling in your favor with respect to your currently pending appeals related to the Church's use of the Amphitheatre, dog park and disk golf course.

If this proposal is agreeable to your client, please sign below where indicated, return your signature to me, and this letter can serve as our Rule 11 agreement. Please do not hesitate to call Nicole or me if you have any questions regarding this letter or the Church's construction progress.

Sincerely,

A handwritten signature in black ink, appearing to read 'Geoffrey D. Weisbart', written over a horizontal line.

Geoffrey D. Weisbart



March 28, 2018

Page 3

Agreed:

A handwritten signature in cursive script that reads 'Robert Kleeman'.

Robert Kleeman

- c: Steve Metcalfe (*Via Email* – [REDACTED])
- Michele Rogerson Lynch (*Via Email* – [REDACTED])
- Nicole LeFave (*Firm*)

From: [REDACTED]
Subject: RE: C15-2015-0147 and C15-2015-0168
Date: Tuesday, April 03, 2018 12:33:54 PM
Attachments: [image001.png](#)

Leane:

This email will confirm the Appellants are in agreement with postponing the BOA hearing on the above referenced cases to the May BOA meeting.

Please let me know if you have any questions.

Thanks.

Robert Kleeman
Sneed, Vine & Perry, P.C.
900 Congress Avenue, Suite 300
Austin, Texas 78701
(512) 476-6955 – main
(512) 494-3135 - direct
(512) 476-1825 – fax

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From: [REDACTED]
Sent: Tuesday, April 3, 2018 12:31 PM
To: Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>
Cc: [REDACTED]
Blair [REDACTED]
[REDACTED]-2015-0168

Dear Leane:

The Church and Mr. Kleeman are jointly requesting that the appeals referenced above be postponed to the May 14, 2018 Board of Adjustment hearing. The Church is in the final stages of installing the proposed sound mitigation improvements and needs additional time to complete installation. We believe that we will have everything installed by the May meeting. For the Board's reference, I have attached photos reflecting the Church's progress. All that remains is the installation of louvers on the west sound wall. We have had manufacturer-caused delays in receiving the louvers, but hope to have them by next week's meeting. I will be in attendance on Monday night to answer any questions the Board Members might have.

Additionally, it has been brought to our attention that Mr. Kleeman would like to address the BOA regarding CodeNext and that certain BOA Members feel that this is inappropriate due to the pending appeals. The Church is unopposed to Mr. Kleeman addressing the BOA regarding CodeNext issues. It is our understanding that Mr. Kleeman is not seeking to relitigate issues that have been resolved by binding settlement agreement between the Church and his clients or to seek any ruling in his favor with respect to the above-referenced appeals.

Please let me know if you have any questions or need any additional information from me.

NICOLE LEFAVE

direct 512.652.5789 toll-free 888.844.8441 fax 512.682.2074
[REDACTED]



212 Lavaca St., Suite 200, Austin, TX 78701

wshllp.com

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From: [REDACTED]
To: [Heldenfels, Leane](#)
Cc: [REDACTED]
Subject: C15-2015-0147 and C15-2015-0168
Date: Tuesday, April 03, 2018 12:31:37 PM
Attachments: [image001.png](#)

Dear Leane:

The Church and Mr. Kleeman are jointly requesting that the appeals referenced above be postponed to the May 14, 2018 Board of Adjustment hearing. The Church is in the final stages of installing the proposed sound mitigation improvements and needs additional time to complete installation. We believe that we will have everything installed by the May meeting. For the Board's reference, I have attached photos reflecting the Church's progress. All that remains is the installation of louvers on the west sound wall. We have had manufacturer-caused delays in receiving the louvers, but hope to have them by next week's meeting. I will be in attendance on Monday night to answer any questions the Board Members might have.

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Please let me know if you have any questions or need any additional information from me.

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From: [REDACTED]
Subject: RE: Request from BOA chair
Date: Tuesday, April 03, 2018 11:52:56 AM
Attachments: [image001.png](#)
[Rule 11 Agreement 03292018.pdf](#)

Leane:

Attached is a copy of the letter agreement between the appellants and Life Austin regarding postponing the cases to the May BOA hearing.

I think the letter is self-explanatory but let me know if you have any questions.

I will check with Life Austin's counsel to see when they intend to send the postponement request to you.

Robert Kleeman
Sneed, Vine & Perry, P.C.
900 Congress Avenue, Suite 300
Austin, Texas 78701
(512) 476-6955 – main
(512) 494-3135 - direct
(512) 476-1825 – fax

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From: Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>
Sent: Tuesday, April 3, 2018 11:15 AM
To: [REDACTED]
Subject: Request from BOA chair

Hi Mr. Kleeman –if you have the letter referred to by the Chair in message below, can you provide in an reply email and I'll include it in the Board's late back up for Monday's hearing.

Also, if you're ready to withdraw the pending cases a separate email with that request can also go in the late back up if received by 10am Monday (sorry if you've already sent this, I'm working my way through emails after having been out a few days helping my mom at hospital – recovering from hip surgery.....can't I press pause on the aging button?)

Thanks –

Leane Heldenfels

Planner Senior – Board of Adjustment Liaison

City of Austin Development Services Department

One Texas Center, 505 Barton Springs Road, 1st Floor, Development Assistance Center

Walk-in hours 9a-12p M-F

Office: 512.974.2202 Cell: 512.567.0106 (*personal, for meeting day & after hours emergency use only*)



From: William Burkhardt
Sent: Monday, April 02, 2018 10:40 AM
To: Heldenfels, Leane
Subject: Kleeman letter

Hi Leane –

I'm told Robert Kleeman has a letter from Life Austin Church authorizing him to speak regarding our New Business item A0-2, and I'd like it in the backup for the item should objections be raised by any Board member – could you make contact with him and be sure it's included, please?

Thank you!

William



March 28, 2018

VIA EMAIL: [REDACTED]

Robert Kleeman
Sneed, Vine & Perry
900 Congress Avenue, Suite 300
Austin, Texas 78701

Re: LifeAustin Church, the Hill Country Estates Home Owners Association and the Covered Bridge Property Owners Association

Dear Robert:

The purpose of this letter is to invoke Paragraph 6d of the Agreement Regarding the Use of LifeAustin Property and LifeAustin Amphitheatre, dated December 12, 2016 (“the Agreement”). As you know, the Church has been working diligently to complete the Sound Mitigation Improvements by the agreed deadline of April 4, 2018. Despite making every effort to complete installation of the Sound Mitigation Improvements by the deadline, the Church will be unable to do so due to force majeure—circumstances beyond its control related to construction delays.

The only Sound Mitigation Improvement that remains to be installed is the West Sound Screen. The Church had anticipated delivery of the West Sound Screen louvers from the manufacturer this week. Yesterday, the Church learned that they will not be available for shipment until April 4, 2018. While the fabrication of the louvers is complete, the manufacturer has been unable to complete painting of the louvers. Due to this manufacturer delay, over which the Church had no control, the Church now anticipates delivery of the louvers on April 6, 2018. Once the Church has received the West Sound Screen Louvers, they estimate three days for installation. The Church is committed to completing installation of the sound mitigation measures as quickly as is reasonably possible, given the manufacturing delay.

Again, this delay is beyond the Church’s control, despite their tireless attempt to complete construction and installation of the Sound Mitigation Improvements on time. As such, the Church is invoking the force majeure provision of the Agreement. *See* Agreement ¶ 6d. The Agreement contemplates extensions of the deadline to complete the Sound Mitigation Improvements for force majeure. For purposes of the Agreement, “force majeure” includes “delays . . . for the purposes of . . . construction.” Agreement ¶ 2i.

Obviously, this development is disappointing to our respective clients. All parties had hoped that the appeals currently pending before the Austin Board of Adjustment could be



March 28, 2018
Page 2

dismissed at the upcoming meeting on April 9, 2018. It now seems unavoidable that we must ask for one more postponement.

It has also come to my attention that you would like to address the Board of Adjustment regarding the City of Austin's CodeNext project, in the context of assisting the Board of Adjustment in offering comments to the City of Austin on certain portions of the City Code that may be rewritten. To be clear, we see any testimony you might offer to the Board of Adjustments on the CodeNext project as unrelated to your clients' currently pending appeals regarding the Church's Amphitheatre. The parties have reached a settlement agreement and are continuing to operate according to the terms of that settlement agreement. We trust that you have no desire to put the settlement agreement in jeopardy. Further, we do not believe that anything you might say to the Board of Adjustment would be binding on the Board of Adjustment, the City of Austin, or a court of law. For these reasons, the Church has no issue with you offering your comments to the Board of Adjustment regarding the CodeNext project.

In light of these circumstances, the Church makes the following proposal:

1. Your clients accept the Church's assertion of force majeure, subject to the expectation that the West Sound Screen louvers will be delivered to the Church on or before April 11, 2018 and with the understanding that the Church will diligently pursue completion of the sound mitigation measures as quickly as is reasonably possible under the circumstances, subject to any further delays for force majeure that may arise;
2. The parties agree to postpone the appeals currently pending before the Board of Adjustment to the May 14, 2018 Board of Adjustment meeting; and
3. Council for the Church will notify Board of Adjustment staff that it has no objection to your public presentation regarding CodeNext related issues, with the understanding that it is not your intent to relitigate issues resolved by the Agreement or seek any ruling in your favor with respect to your currently pending appeals related to the Church's use of the Amphitheatre, dog park and disk golf course.

If this proposal is agreeable to your client, please sign below where indicated, return your signature to me, and this letter can serve as our Rule 11 agreement. Please do not hesitate to call Nicole or me if you have any questions regarding this letter or the Church's construction progress.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey D. Weisbart", written over a horizontal line.

Geoffrey D. Weisbart



March 28, 2018

Page 3

Agreed:

A handwritten signature in cursive script that reads 'Robert Kleeman'.

Robert Kleeman

- c: Steve Metcalfe (*Via Email* – [REDACTED])
- Michele Rogerson Lynch (*Via Email* – [REDACTED])
- Nicole LeFave (*Firm*)

From: [REDACTED]
Subject: RE: C15-2015-0147 and C15-2015-0168
Date: Tuesday, April 03, 2018 12:33:54 PM
Attachments: [image001.png](#)

Leane:

This email will confirm the Appellants are in agreement with postponing the BOA hearing on the above referenced cases to the May BOA meeting.

Please let me know if you have any questions.

Thanks.

Robert Kleeman
Sneed, Vine & Perry, P.C.
900 Congress Avenue, Suite 300
Austin, Texas 78701
(512) 476-6955 – main
(512) 494-3135 - direct
(512) 476-1825 – fax

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From: [REDACTED]
Sent: Tuesday, April 3, 2018 12:31 PM
To: Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>
Cc: [REDACTED]
Blair [REDACTED]
[REDACTED]-2015-0168

Dear Leane:

The Church and Mr. Kleeman are jointly requesting that the appeals referenced above be postponed to the May 14, 2018 Board of Adjustment hearing. The Church is in the final stages of installing the proposed sound mitigation improvements and needs additional time to complete installation. We believe that we will have everything installed by the May meeting. For the Board's reference, I have attached photos reflecting the Church's progress. All that remains is the installation of louvers on the west sound wall. We have had manufacturer-caused delays in receiving the louvers, but hope to have them by next week's meeting. I will be in attendance on Monday night to answer any questions the Board Members might have.

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Please let me know if you have any questions or need any additional information from me.

NICOLE LEFAVE

direct 512.652.5789 toll-free 888.844.8441 fax 512.682.2074
[REDACTED]

wsh WEISBART SPRINGER HAYES LLP

212 Lavaca St., Suite 200, Austin, TX 78701

wshllp.com

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To: [Heldenfels, Leane](#)
Cc: [REDACTED]
Subject: C15-2015-0147 and C15-2015-0168
Date: Tuesday, April 03, 2018 12:31:37 PM
Attachments: [image001.png](#)

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Please let me know if you have any questions or need any additional information from me.

NICOLE LEFAVE

direct 512.652.5789 toll-free 888.844.8441 fax 512.682.2074
[REDACTED]



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From: [REDACTED]
Subject: RE: Request from BOA chair
Date: Tuesday, April 03, 2018 11:52:56 AM
Attachments: [image001.png](#)
[Rule 11 Agreement 03292018.pdf](#)

Leane:

Attached is a copy of the letter agreement between the appellants and Life Austin regarding postponing the cases to the May BOA hearing.

I think the letter is self-explanatory but let me know if you have any questions.

I will check with Life Austin's counsel to see when they intend to send the postponement request to you.

Robert Kleeman
Sneed, Vine & Perry, P.C.
900 Congress Avenue, Suite 300
Austin, Texas 78701
(512) 476-6955 – main
(512) 494-3135 - direct
(512) 476-1825 – fax

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From: Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>
Sent: Tuesday, April 3, 2018 11:15 AM
To: [REDACTED]
Subject: Request from BOA chair

Hi Mr. Kleeman –if you have the letter referred to by the Chair in message below, can you provide in an reply email and I'll include it in the Board's late back up for Monday's hearing.

Also, if you're ready to withdraw the pending cases a separate email with that request can also go in the late back up if received by 10am Monday (sorry if you've already sent this, I'm working my way through emails after having been out a few days helping my mom at hospital – recovering from hip surgery.....can't I press pause on the aging button?)

Thanks –

Leane Heldenfels

Planner Senior – Board of Adjustment Liaison

City of Austin Development Services Department

One Texas Center, 505 Barton Springs Road, 1st Floor, Development Assistance Center

Walk-in hours 9a-12p M-F

Office: 512.974.2202 Cell: 512.567.0106 (*personal, for meeting day & after hours emergency use only*)



From: William Burkhardt
Sent: Monday, April 02, 2018 10:40 AM
To: Heldenfels, Leane
Subject: Kleeman letter

Hi Leane –

I'm told Robert Kleeman has a letter from Life Austin Church authorizing him to speak regarding our New Business item A0-2, and I'd like it in the backup for the item should objections be raised by any Board member – could you make contact with him and be sure it's included, please?

Thank you!

William

From: [REDACTED]
Subject: RE: 4/9 Board of Adjustment late back up
Date: Monday, April 09, 2018 2:58:20 PM

i am going to postponed zenna for 2 more months cause we haven't been able to clear austin energy

Thank you
Hector Avila

Sent from my Sprint Samsung Galaxy S7 edge.

----- Original message -----

From: "Heldenfels, Leane" <Leane.Heldenfels@austintexas.gov>
Date: 4/9/18 2:54 PM (GMT-06:00)

[REDACTED]

Cc: "Ramirez, Diana" <Diana.Ramirez@austintexas.gov>
Subject: RE: 4/9 Board of Adjustment late back up

Greetings 4/9 Board of Adjustment applicants –

We'll only have paper copy of late back up today and will then upload late back up to Board website tomorrow by 3pm for your reference.

We will have paper copy of everything received for the Board and will have extra paper copies for applicants (look at sign in book at entrance).

The paper receipt by the Board does meet the hearing requirement –but sorry you won't be able to see your late back up received on your case until you arrive today. Please do look at the items for your case as we've received several pieces.

Take care –

Leane Heldenfels

Planner Senior – Board of Adjustment Liaison

[City of Austin Development Services Department](#)

One Texas Center, 505 Barton Springs Road, 1st Floor, Development Assistance Center

Walk-in hours 9a-12p M-F

Office: 512.974.2202 Cell: 512.567.0106 (*personal, for meeting day & after hours emergency use only*)

email_logo_new_green-01



From: Heldenfels, Leane
Sent: Thursday, April 05, 2018 2:13 PM

[REDACTED]

Subject: FW: 3/12 Board of Adjustment agenda, back up

Greetings 4/9 Board of Adjustment Applicants:

Please see attached meeting agenda and print out a copy to bring to the meeting if you'd like to have a paper copy there - we will not have extra paper copies at the meeting.

Note that the Board is starting their meeting at 4:30pm this month to cover the new business items. That will mean that they may not start on hearing cases until after 5:30 if they are still discussing, taking action on the new business items.

I just don't know for sure what time they will commence with the remainder on their agenda, so if you are requesting an additional postponement I would come at 4:30 in case they call postponements first/out of order and act on them first, but also realize that they may run past 5:30 on new business before they take up the rest of their agenda and may not start new cases until 6pm or even later. But, they won't start any cases any earlier than 5:30, but if they start later could be that we also end the meeting later than usual so postponed cases may be heard later than usual. This agenda case order was established by the Board and they only hear items out of order under special circumstances. Apologies that a more certain time of your case being heard is not known this month.

If you would like to request to have your case postponed or withdrawn from the Board's 4/9 agenda and you don't see that request noted on this posted version of the agenda please **reply to just me (not to all)** by 10 am Monday and advise in writing/email. \

Otherwise, you can attend the beginning of the hearing portion of the meeting (*potentially 4:30 or possibly as close to 5:30 as they can achieve*) and request postponement or withdraw of your case to the Board in person.

I will announce any known requests for postponement or withdraw at the beginning of the hearing, again as close to 5:30 as possible, and then these requests are voted on by the Board at that time. Note if this is a 2nd request for postponement you should plan to be present at the hearing as the Board may want to hear from you about the circumstances surrounding the need for additional postponement and may not agree to postpone your case any further.

The agenda and case back up are now posted online at the Board's website:

http://www.austintexas.gov/cityclerk/boards_commissions/meetings/15_1.htm

(If this link doesn't work go to austinexas.gov, click on government tab near top of page, click on Boards and Commissions small tab near top of page, highlight Board of Adjustment and click view website, open agenda folder to left of page, see the January 8 meeting materials).

Please go to the Board's website and take a look at the back up material posted there.

If you see anything you've submitted that is either missing or not legible please bring 14 sets of that info to Monday's hearing – but no need to bring copies of items that are clearly displayed in the back up unless you'd like them to have a full color paper copy that you didn't

have us slip into the paper packet.

You can also see the packet page numbers that we've added to the evidence so you can know what page numbers the Board members may refer to during the hearing, feel free to print out all of your numbered case evidence so you have those page numbers, too.

Also, remember to go back to this link **after 3pm on Monday** to see any **late back up** that has been received on your case. This late back up will normally consist of replies received from our public notice mailing and other correspondence received on your case. Print out a copy of the late back up info for your reference and bring it to the hearing in the event that the Board has questions about any of the responses received.

Please bring a copy of all of the evidence you'd like to present on a usb flash drive to the hearing and the AV staff person can help you project it and run thru the info as you speak on your case. The AV staff prefer that you label your flash drive w/ your agenda number and give the drive to them ahead of your case being called so they can make sure it's able to be projected correctly when your case is called.

If you add any **new/revised information** to your presentation that is not in the packet, **email me with a pdf** of that **new/revised information** on **Tuesday after the hearing**.

We can validate your parking stub from the garage below City Hall, so **remember to bring it up with you**. The garage entrance is off of Guadalupe.

We will issue **decision sheets** from the meeting on our website page for Public Search of case and permit info **2 weeks** after the hearing, so this month that will be by 4/23. Here's a link to the page where we'll file them:

https://www.austintexas.gov/devreview/a_queryfolder_permits.jsp

(If this link doesn't work go to austintexas.gov, click on development tab near top of page, then click on Search)

Once at this page you can input your case number or address, then click submit. Open the BA

case and scroll down to attachments and see the final ds (decision sheet) there. You can print it out for use in a resubmittal for a permit, site plan or subdivision or email it to your code officer for any pending violation. **We will not send out a copy of the decision sheet.**

If your case is **denied or if you don't agree with any part of the Board's decision (for example, a condition imposed on a granted case)** you have until end of day **Thursday 4/19** to request a reconsideration and provide new or clarified evidence to show how you feel the Board erred in its decision. Cost for sending out re-notification of a reconsidered case is **\$249 – check** made out to the City of Austin that will need to be dropped to my mailbox by close of lobby (4:45p) same day, Th 4/19).

If your case is postponed to the 5/14 hearing you'll have until end of day **Monday 4/30** to **send me** an email with a pdf of any **revised, additional evidence** that we'll add to that meeting's advance packet along with all the evidence that was provided in the 4/9 packet and late back up.

I look forward to seeing you all on Monday – **reply just to me, not to all**, to advise if you have questions, concerns.

Leane Heldenfels

Board of Adjustment Liaison

[City of Austin Development Services Department](#)

One Texas Center, 1st Floor, Development Assistance Center

505 Barton Springs Road

Office: 512-974-2202

Logo_DSD Email Signature wTag



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We want to hear from you! Please take a few minutes to complete our [online customer survey](#).

Nos gustaría escuchar de usted. Por favor, tome un momento para [completar nuestra encuesta](#).

From: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request for Postponement - Item O-3 - C15-2018-0004 - 4303 Victory Drive
Date: Friday, April 06, 2018 3:06:57 PM

Mark,

To answer your question, yes, we have requested a postponement of the hearing. Thank you for being on board with continuing our conversations.

Best,
Micah

Micah J. King
Attorney
Direct: 512.370.3468
[REDACTED]

From: [REDACTED]
Sent: Friday, April 06, 2018 3:02 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Request for Postponement - Item O-3 - C15-2018-0004 - 4303 Victory Drive

Thanks everyone. Just to be clear Micah, have you requested another postponement for Monday's hearing? If so, I won't bother on showing up but if you haven't requested another postponement then I need to make arrangements so I can be there at 4:30PM.

I would be on board for another postponement as there are still unresolved issues.

Thanks,

Mark

On Fri, Apr 6, 2018 at 2:44 PM King, Micah <[REDACTED]> wrote:

Mark and Blythe,

Here is my understanding about the atypical timing of Monday's meeting. The Board is starting their meeting at 4:30pm this month to cover the new business items (that does not include our case). That will mean that they may not start on hearing cases until after 5:30 if they are still discussing and taking action on the new business items. However, they may call postponements out of order, meaning perhaps as early as 4:30, but they won't start any cases earlier than 5:30, though it could be later and may run long. Leane, please correct me if I got any of that wrong, and thank you for noting our request for a postponement to continue working with the neighbors.

Micah

Micah J. King
Attorney
Direct: 512.370.3468

[REDACTED]

From: [REDACTED]
Sent: Friday, April 06, 2018 2:28 PM
To: Heldenfels, Leane
Cc: [REDACTED]

Subject: Re: Request for Postponement - Item O-3 - C15-2018-0004 - [4303 Victory Drive](#)

Ah! Apologies. I didn't realize the meeting was starting early this time. Leane, why is that? CodeNext?

Sent from my iPhone

On Apr 6, 2018, at 2:26 PM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

We will begin at 4:30, I'm not sure if the Chair will hear postponements then or after new business (which might be 5:30 or 6).

Did you want to oppose a future postponement or make sure another postponement occurred? Or just speak to the item in general?

Leane

From: [REDACTED]
Sent: Friday, April 06, 2018 12:38 PM
To: Heldenfels, Leane
Cc: [REDACTED]
Subject: Re: Request for Postponement - Item O-3 - C15-2018-0004 - 4303 Victory Drive

Hello Leane,

What time will this hearing take place on Monday, 04/09/2018?

Thanks,

Mark Totsch

On Mon, Mar 12, 2018 at 10:03 AM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

No need to appear, since the applicant concurs the item won't be heard.

I think this may be the last postponement they grant prior to a hearing needing to occur and then the board could postpone after they conduct the hearing if they need more information, time to decide.

Thanks for reaching out and for advising that you are in agreement with the postponement to 4/9.

Take care –

Leane Heldenfels

Planner Senior – Board of Adjustment Liaison

City of Austin Development Services Department

One Texas Center, 505 Barton Springs Road, 1st Floor, Development Assistance Center

Walk-in hours 9a-12p M-F

Office: 512.974.2202 Cell: 512.567.0106 (*personal, for meeting day & after hours emergency use only*)

<image001.png>

From: [REDACTED]

Sent: Monday, March 12, 2018 10:00 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: Re: Request for Postponement - Item O-3 - C15-2018-0004 - [4303 Victory Drive](#)

Hello Leane,

I would also like to request a postponement for this afternoons meeting. Do I need to show up in case the Board of Adjustments dismiss' the postponement?

Thanks,

Mark Totsch

On Fri, Mar 9, 2018 at 4:20 PM, King, Micah

[REDACTED] > wrote:

Leane,

On behalf of the applicant, we are requesting a postponement of Item O-3 on Monday's Board of Adjustment agenda, and ask that it be rescheduled to April 9.

We are continuing to work with the neighbors in the vicinity of the subject property to address any concerns and we need additional time to complete those discussions. I am copying our nearest neighbors, Blythe and Mark Totsch, Mary Lovell, and Richard Llewellyn.

The first postponement was at the request of Austin Energy and a neighbor. The second, most recent postponement was a joint request.

Please let me know if you have any questions or need any additional information from us. Thank you.

Micah

Micah J. King

Attorney

HUSCH BLACKWELL LLP

[111 Congress Avenue, Suite 1400](#)

[Austin, TX 78701](#)-4093

Direct: [512.370.3468](#)



Named a first-tier national real estate law firm by U.S. News-Best Lawyers in 2017

From: [REDACTED]
To: [Heldenfels, Leane](#)
Cc: [REDACTED]
Subject: Re: Orig pdf of 6705 Pixie Cove case info
Date: Thursday, March 01, 2018 12:28:04 PM

Leanne,

There are some last minute amendments that are needed to this application. I need to postpone the case one time to the April 9 agenda.

Please confirm.

Kind Regards,
DC

Sent from a mobile device. There will be typos.

On Feb 27, 2018, at 4:47 PM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

Sounds good – thanks

Leane

From: [REDACTED]
Sent: Tuesday, February 27, 2018 4:40 PM
To: Heldenfels, Leane
Cc: [REDACTED]
Subject: Re: Orig pdf of 6705 Pixie Cove case info

Leanne,

Kasey can scan PDF's to you tomorrow morning if that's ok?

Kind Regards,
DC

Sent from a mobile device. There will be typos.

On Feb 27, 2018, at 4:05 PM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

Hi David – I just have a paper copy of the application, can you reply and attach your pdf version of everything. The electronic packet board members prefer original pdfs to the ones I can make via our copies – say the origs have better resolution, etc.

Thanks –

Leane Heldenfels

Planner Senior – Board of Adjustment Liaison

[City of Austin Development Services Department](#)

One Texas Center, 505 Barton Springs Road, 1st Floor, Development
Assistance Center

Walk-in hours 9a-12p M-F

Office: 512.974.2202 Cell: 512.567.0106 (*personal, for meeting day & after hours
emergency use only*)

<image001.png>

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak **FOR** or **AGAINST** the proposed application. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is will be sent.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing;
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our website:

www.austintexas.gov/department/development-services

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. **All comments received will become part of the public record of this case.**

Case Number: C15-2018-0009, 6705 Pixie Cove

Contact: Leane Heldenfels, 512-974-2202, leana.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

WANDA THOMPSON

Your Name (please print)

6705 PIXIE COVE, AUSTIN, TX 78746

Your address(es) affected by this application

Wanda Thompson

Signature

Date

Daytime Telephone: 512-775-3923

Comments: PLEASE SEE ATTACHED

LETTER.

THANK YOU-

Comments must be returned by 10am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mail: City of Austin-Development Services Department/ 1st Floor

Leane Heldenfels

P.O. Box 1088

Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be received in time for this hearing)

Fax: (512) 974-6305

Email: leana.heldenfels@austintexas.gov

WANDA THOMPSON

6703 PIXIE COVE
AUSTIN, TEXAS 78746
512-775-3923

April 6, 2018

Via: Facsimile No. 512-974-6305

City of Austin-Development Services Department
Leane Heldenfels
P. O. Box 1088
Austin, Texas 78767

**Re: Public Hearing: Board of Adjustment, April 9, 2018;
Agenda Item No. C15-2018-0009, 6705 Pixie Cove**

Dear Ms. Heldenfels:

I am writing to the Board of Adjustments to object to the Impervious Cover Variance being requested for the property located at 6705 Pixie Cove. I own and occupy as my residence the property next door to this property, at 6703 Pixie Cove. I feel that this variance should be denied for the following reasons:

(1) This is waterfront property, with direct runoff into Lake Austin, and I believe that it is especially important for property within a close proximity to the lake to have adequate porous space for absorption for water runoff, so that harmful pollutants do not end up in the lake. Restrictions for impervious cover are designed to prevent this from happening. Granting a variance to allow more impervious cover immediately adjacent to the lake will actually accelerate the runoff of harmful pollutants found in neighborhoods like this, including motor oils that are washed off of the streets at the beginning of each rain event and lawn treatment chemicals used to fertilize and kill weeds in almost every lawn nearby.

(2) The additional size (height and mass) of the proposed new home will unreasonably block my existing view of the lake, which will substantially and unfairly decrease the value of my home.

(3) The applicant has not satisfied the applicable provisions of Code Section 25-8-41 (where the variance application must satisfy all of the subsection A requirements), because the proposed new home will be larger than other recently-built homes in the neighborhood that were forced to comply with the ordinance-mandated impervious coverage cap, and, notwithstanding the applicant's denials, the variance is necessitated by the scale, layout construction method or other design decisions made by the applicant.

Your thoughtful consideration of my objections to granting this variance request will be appreciated.

Sincerely,

Wanda Thompson

W. RANDOLPH DAVIS

Attorney-Mediator
SWBC Tower
9311 San Pedro Avenue, Suite 707
San Antonio, Texas 78216

Telephone: (210) 342-2707
Facsimile: (210) 342-2107
[REDACTED]

April 5, 2018

City of Austin
Development Services Department, 1st Floor
Leane Heldenfels
P.O. Box 1088
Austin, TX 78767-1088

VIA Email: lane.heldenfels@austintexas.gov

Re: Case Number:C15-2018-0009

Dear Ms. Heldenfels,

Our office represents Mr. and Mrs. Lennard Lewis and DeSeay, LLC, the owner of 6702 Elfland lot, immediately across the canal from the Applicant's property at 6705 Pixie Cove, in the above captioned case number.

The Lewis' have owned their property for a number of years. The Applicant's request for variance will seriously impact the Lewis' property in a number of respects. The request to reduce this side yard setback from Ten (10) feet to Four (4) feet Ten (10) inches is problematic in that the new structure to be built will not only obstruct but will reduce the flow of air between the Applicant's new structure and the Lewis' existing home. The new structure will allow both houses to look directly into each others homes.

The decrease of the shoreline set back from Twenty-Five (25) feet to Fourteen (14) feet, six (6) inches will allow any new construction to obstruct the Lewis' existing view of the lake. The request under C. is hard to evaluate without drawings to show the impact the reduction will have on adjoining properties.

The original subdivision Plat was developed to provide the most efficient use for each lot in the subdivision, so as to not impose or impact other property owners.

Our request is to postpone the hearing from April 9, 2018 to a later date and have the Applicant provide drawings and specifications to each of the property owners affected by his requests. It is difficult, if not impossible, to evaluate the total impact of Applicant's requests without some visual aids to review in advance of the hearing. This request for postponement and submission of visual drawings and aide could help eliminate objections to what is actually being proposed by the Applicant. In the alternative, if the postponement is not granted, then let this notice serve as strong objection to the granting of any of the requested variances in the Application for Variance of Mr. Phillip Cameron.

We feel the Lewis' lot is the one most effected by the proposed changes.

Sincerely,



W. Randolph Davis
Agent to Deseay, LLC
Owner of 6702 Elfland

WRD/th

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. **All comments received will become part of the public record of this case.**

Case Number: C15-2017-0054, 1615 Westlake Drive

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@ausintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

RICHARD KOORIS

Your Name (please print)

I am in favor

I object

1625 WESTLAKE DR. 78746

Your address(es) affected by this application

Richard Kooris

Signature

3.31.18

Date

Daytime Telephone: 512-422-8878

Comments: I AM IN FAVOR OF APPROVAL. THE NAVIGABLE CHANNEL IN BEE CREEK WILL NOT BE IMPACTED. THIS PROPERTY OWNER SHOULD BE ABLE TO IMPROVE HIS OWN PROPERTY WITHOUT INTERFERENCE. THE COA DOES NOT MAINTAIN BEE CREEK.

Comments must be returned by 10am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mail: City of Austin-Development Services Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing for them to be seen by the Board at this hearing)

Fax: (512) 974-6305

Email: leane.heldenfels@ausintexas.gov

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, **you are not required to attend**. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed application. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice will be sent.

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An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (it may be delivered to the contact person listed on a notice); or
 - appearing and speaking for the record at the public hearing;
- and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
 - is the record owner of property within 500 feet of the subject property or proposed development; or
 - is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

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Case Number: C15-2017-0054, 1615 Westlake Drive

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, April 9, 2018

ERIK N. BROLINE, P.E. (INACTIVE)
Your Name (please print)

I am in favor
 I object

1631 AND 1637 WESTLAKE DRIVE
Your address(es) affected by this application

E. N. Broline, P.E.
Signature

4/5/2018
Date

Daytime Telephone: 512 924 7126

Comments: REVIEW OF APPLICANT'S SUBMITTALS DO NOT AFFIRM, WITH RELEVANT ENGINEERING DATA, THAT THE VARIANCE WILL NOT IMPACT NAVIGATION TO UP-STREAM PROPERTIES. CREEK DEPTH VARIES GREATLY, REQUIRING A SURVEY OF THE CREEK BED TO VERIFY NO IMPACT TO NAVIGATION WILL OCCUR. PICTURES ARE USELESS FOR THIS EVIDENCE. I DO NOT WANT TO POTENTIALLY LOSE NAVIGABLE ACCESS TO MY PROPERTY.

Comments must be returned by 10am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mail: City of Austin-Development Services Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing for them to be seen by the Board at this hearing)

Fax: (512) 974-6305

Email: leane.heldenfels@austintexas.gov



4/4/2018

attn: The City of Austin Board of Adjustment

Sean Little attended the Crestview Neighborhood Association meeting on February 12th. He presented his carport plans and proposal to those in attendance. He was invited to return the following week to the officers board meeting. He answered the questions of the 9 board members present and a vote was taken. By unanimous agreement the board voted in favor of the requested front setback variance and in favor of his carport design and attempt to obtain a permit to construct his proposed plan and to not oppose the variance requested for the front setback. Sean Little provided documentation of 23 surrounding neighbors that agreed that he should be able to build his proposed carport in front of his existing garage. For the record no one that Sean spoke with was opposed to his carport proposal.

The CNA understands that Sean Little intends to build a very good quality and architecturally appealing carport that will match the front elevation of his existing 1955 built home at 1500 Princeton Ave.

Sincerely,

Mike Lavigne
President
Crestview Neighborhood Association